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No. 80-1305

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

ALFRED L. SNAPP & SON, INC., et al.,

Petitioners,

v.

COMMONWEALTH OF PUERTO RICO
On the relation of
PEDRO BAREZ, SECRETARY, DEPARTMENT OF
LABOR AND HUMAN RESOURCES,

Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF FOR MIGRANT LEGAL ACTION PROGRAM, INC., COLORADO RURAL LEGAL SERVICES, FARMWORKER LEGAL SERVICES OF NEW YORK, INC., FLORIDA RURAL LEGAL SERVICES, LEGAL AID BUREAU, INC., PINE TREE LEGAL ASSISTANCE, INC., PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, TEXAS RURAL LEGAL AID, VIRGINIA FARMWORKERS PROJECT, AND WEST VIRGINIA LEGAL SERVICES PLAN, INC. AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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February 12, 1982

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Migrant Legal Action Program, et al. hereby move for leave to file the

attached brief as amici curiae in this case pursuant to Rule 36 of the Rules of the United States Supreme Court. The interest of Migrant Legal Action Program, et al. as amici curiae and the reasons the Court should grant this motion are set forth in "Interest Of Amici Curiae," at pages 2-8 of the attached brief.

Counsel for Respondent has consented to the filing of the attached brief, but counsel for Petitioners has refused to give his consent. Copies of Respondent's consent and Petitioners' letter refusing consent have been filed with the Clerk of the Court.

Respectfully submitted,

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INTEREST OF AMICI CURIAE

Amici are ten organizations that are involved on a day-to-day basis with the legal problems faced by migrant farmworkers. Several of the amici are dedicated to the specific purpose of providing legal services to migrant workers. Others have been established to serve a broader-based segment of this country's poor, including but not limited to migrant workers. As explained more fully below, amici and their clients will be significantly affected by the Court's decision in this case. This brief is intended to present the Court with the viewpoint of domestic migrant farmworkers who seek employment in the context of the temporary foreign labor certification process (the "H-2" program) and the organizations that attempt to redress their grievances and to present facts regarding individual litigation under the interstate

employment system that may not be known to the parties.

The Migrant Legal Action Program, Inc. (MLAP), located in Washington, D.C., is a national support center for migrant farmworkers and attorneys representing migrant farmworkers. MLAP is funded by the Legal Services Corporation, and provides free legal assistance to migrant farmworkers and their lawyers. Its overriding goal is the improvement of wages and working conditions of one of the nation's poorest working groups.

MLAP has found that individual domestic workers, whom employers must recruit before turning to foreign workers, cannot realistically pursue claims arising out of their right to employment under the interstate employment system and temporary foreign labor certification regulations. Both the administrative complaint process

and the judicial system are, as a practical matter, inaccessible to the vast majority of these farmworkers, who have no access to legal representation. MLAP, with four staff attorneys, and suffering from a twenty-five percent cut in its budget this year, cannot change this reality. For these reasons, MLAP has a vital interest in this case and in the resolution of the question whether Puerto Rico has standing to redress violations of law in connection with the interstate employment system.

Puerto Rican Legal Defense and Education Fund is a foundation-funded nonprofit corporation that provides legal assistance to the Puerto Rican community. The Fund and its clients have a direct interest in the treatment of Puerto Rican agricultural workers, because class-based discrimination of the sort alleged in this suit affects all members of the Puerto

Rican community. However, because it is located in New York City, the Fund is rarely able to represent rural workers for claims arising in Virginia and other agricultural areas.

The eight other amici are legal aid groups whose clientele include migrant farmworkers. None of these groups, however, either singly or in combination with others has the resources adequately to protect the legal rights of Puerto Rican migrant workers seeking work on the mainland. As their sources of funds dry up, some of these organizations are forced to turn away individual migrant clients. These amici thus have a substantial interest in this case, both because its outcome is likely directly to affect their work and the demands on their limited resources and because of its impact on migrant workers and other poor whom they serve.

Farmworkers Legal Services of New York, Inc. and Virginia Farmworkers Project are funded by the Legal Services Corporation and provide legal services to migrants and other indigent farmworkers in their respective States. Because of budgetary constraints, Farmworkers Legal Services must serve thirteen New York counties from only two offices, one in Rochester and the other in Newburgh, New York.[1/] The Virginia Farmworkers Project office is located in Belle Haven, Virginia, 200 miles from the areas in which migrant workers are employed in H-2 program jobs, which are in the western portion of the State. Only one Virginia Farmworker Project lawyer, who is not licensed to practice in Virginia, is available to serve the migrant workers who come to Virginia.

1/ Budgetary constraints recently caused Farmworkers Legal Services to shut down a third office.

To our knowledge, there are no other legal services attorneys in Virginia who regularly represent migrant workers.

Colorado Rural Legal Services, Florida Rural Legal Services, and Texas Rural Legal Aid are federally funded legal service programs for eligible low-income people who live in rural areas. Their clientele, and thus the recipients of their limited resources, include all the rural poor, of which migrant farmworkers are only a part. Migrant workers have regularly sought assistance from these groups in connection with the interstate employment system and displacement by foreign workers.

Legal Aid Bureau, Inc., Pine Tree Legal Assistance, Inc., and West Virginia Legal Services Plan, Inc. are funded by the Legal Services Corporation and serve low-income people in their respective geographic areas.[2/] All of these groups

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2/ Legal Aid Bureau, Inc. is located in Maryland, and Pine Tree Legal Assistance, Inc. is located in Maine.

have set up migrant farmworker projects to deal with the special problems of migrant workers. But the projects are small, and their offices are often located far from their potential clients, as resources and expertise with the problems of migrant workers are scarce. Legal Aid Bureau, Inc., for example, has one licensed attorney, who is located 200 miles from the sites where migrants are employed in H-2 program jobs. Similarly, the migrant project of the West Virginia Legal Services Plan consists of just one attorney for the entire State.

STATEMENT OF THE CASE

In this suit, the Commonwealth of Puerto Rico seeks to defend the integrity of its statutory employment security partnership with the federal government, to redress discrimination against its citizens as a class, and to protect its economy from

the debilitating effects of continuing statutory violations by mainland United States growers. The issue in this proceeding is whether Puerto Rico has standing to do so and to sue the Virginia growers ("Growers") named in its Complaint.

The federal-State employment partnership giving rise to the Commonwealth's cause of action has its foundations in the Wagner-Peyser Act of 1933, 29 U.S.C. §§ 49-49k (1976 & U.S.C.A. Supp. 1981), and the "H-2" temporary worker provisions of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101(a)(15)(H)(ii), 1184(a), (c) (1976).[3/] Under these laws, Puerto Rican citizens are given preference over aliens who would otherwise be imported by

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3/ Puerto Rico is a "State" for purposes of the laws at issue in this suit. 29 U.S.C. § 49b(b) (1976); 8 U.S.C. § 1101(a)(36), (38) (1976).

employers desiring temporary farm laborers.[4/] The United States Employment Service of the Department of Labor, State employment agencies, and the Interstate Clearance System ("ICS") are components of a federal-State system intended to translate the statutory preference for domestic workers into reality, by bringing jobs and workers from different States together. State employment service offices match employers and employees through "job orders," which are employment offers filed by employers and shown to job-seekers by employment service personnel. Employers recruiting outside their own State file "interstate clearance orders," job orders that are routed through the ICS to those

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4/ See Flecha v. Quiros, 567 F.2d 1154, 1155 (1st Cir. 1977), cert. denied, 436 U.S. 945 (1978); Florida Sugar Cane League, Inc. v. Usery, 531 F.2d 299, 303-04 (5th Cir. 1976); Elton Orchards, Inc. v. Brennan, 508 F.2d 493, 500 (1st Cir. 1974).

States, including Puerto Rico, that are likely to have available workers.

Employers like the Growers here who may wish to hire foreign laborers are required by law to use the Wagner-Peyser Act system and to abide by its requirements and the additional requirements of the temporary foreign labor certification regulations.[5/] These employers must attempt to recruit domestic workers through the interstate system. Generally the employers may hire foreign workers only if they are certified by the Department of Labor, and the Department of Labor may certify foreign workers only if the ICS search does not yield U.S. workers to fill the available jobs.[6/] Certification of

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5/ Those regulations are set out at 20 C.F.R. Part 655 (1981).

6/ INA § 101(a)(15)(H)(ii), 8 U.S.C. § 1101(a)(15)(H)(ii) (1976), provides that aliens may enter the United States temporarily if they are coming to perform

[Footnote continued next page]

foreign workers does not, however, end the preference for domestic workers. The employers remain under an obligation actively to recruit domestic workers at all times before the foreign workers depart for the United States; even after the foreign

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[Footnote continued from preceding page]

temporary work and "unemployed persons capable of performing such services or labor cannot be found in this country." Authority for admitting H-2 aliens is vested in the Attorney General, who is authorized by INA § 214(c) to make determinations as to the availability of domestic workers "after consultation with appropriate agencies of the Government, upon petition of the importing employer." 8 U.S.C. § 1184(c) (1976). "Consultation" with the Department of Labor has been formalized by regulation ever since the H-2 provision was enacted. See Comm. on the Judiciary, 96th Cong., 2d Sess., Congressional Research Service Report on Temporary Worker Programs: Background And Issues 59 (Comm. Print 1980). The Department of Labor requires employers to "test the market" for domestic workers by recruiting through the federal-State employment offices system. Only if that test demonstrates that there is not a sufficient number of domestic workers may aliens be certified for temporary work. See 20 C.F.R. Part 655 (1981).

workers leave their countries to come to their temporary jobs in this country, the employers are required to hire qualified domestic workers who apply during the first half of the job period.

The statutory scheme established by Congress creates a federal-State partnership and places on the States, including Puerto Rico, primary responsibility for bringing domestic workers and employers together.[7/] Pursuant to this statutory mandate, the Commonwealth

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7/ See, e.g., S. Rep. No. 63, 73d Cong., 1st Sess. 4 (1933):

> This bill proposes a scheme of Federal leadership, with the placement work done by the States . . . . The Federal Government is also to do the research work, which is often too expensive for the States to do individually; the function of the States being to perform the task of getting the jobs and the workers brought together. (Emphasis added.)

has established an employment security agency to work with the Department of Labor and regularly appropriates Commonwealth monies in support of the system. In exchange, the Commonwealth receives federal funding under 29 U.S.C. § 49d (1976 & U.S.C.A. Supp. 1981) and the opportunity to place its citizens in mainland jobs. Under federal regulations, the Commonwealth is required to cooperate with and adhere to the policies of the Department of Labor and to maintain an adequate system for the interstate recruitment and transfer of agricultural workers.[8/] Although not required by the federal statutes, the Commonwealth has amended its own labor protection laws to make them more compatible with the federal regulations and to ensure that its citizens qualify as "available" workers entitled to the

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8/ See 20 C.F.R. §§ 602, 603 (1981).

statutory preference over foreign workers.[9/]

The Complaint in this action alleges that, during the 1978 harvest, the

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9/ In 1962, Puerto Rico enacted its Public Law 87, P.R. Laws Ann. tit. 29, §§ 526 et seq. (1966), to protect Puerto Rican migrant agricultural workers from discriminatory and abusive treatment by mainland employers. Public Law 87 requires employers to enter into written contracts with the workers, providing for certain minimum employment conditions. In 1977, the United States Court of Appeals for the First Circuit upheld the U.S. Labor Department's position that these minimum conditions, which are more exacting than those required by federal regulations, rendered Puerto Rican workers "unavailable" under the H-2 provision. Flecha v. Quiros, 567 F.2d 1154 (1st Cir. 1977), cert. denied, 436 U.S. 945 (1978). In 1978, the Puerto Rico legislature amended Public Law 87 to exempt job orders received through the ICS from the requirements of Public Law 87. This amendment satisfied the U.S. Department of Labor that Puerto Rican workers were "available," and the Department immediately joined with the Puerto Rican employment security agency to place Puerto Rican workers in mainland apple harvesting jobs. See generally U.S. General Accounting Office, Recruiting And Placing Puerto Rican Workers With Growers During The 1978 Apple Harvest Were Unsuccessful 8-11 (Feb. 14, 1980).

Growers engaged in a pattern of discrimination against migrant workers from Puerto Rico that frustrated and undermined the role of the Commonwealth in the Wagner-Peyser employment system and injured the well-being of its economy and its citizens.[10/] First, the Growers refused to hire Puerto Ricans who accepted job offers cleared through the ICS. Some of the Puerto Ricans with job offers were turned away at the orchards' gates; others with offers never left San Juan because they were informed by the United States Department of Labor and the Commonwealth Department of Labor and Human Resources that the Growers were refusing to hire Puerto Rican recruits. Second, the Growers fired Puerto Rican workers who had been recruited through the ICS system on a variety of pretexts, such as the lack of

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10/ See Joint Appendix 2-31.

work to be done and the inability of the Puerto Ricans to pick apples satisfactorily. Third, the Growers imposed working conditions on the Puerto Ricans that made their work more onerous and demeaning and less remunerative than the work alien workers were permitted to do.

These violations and the Growers' pattern of discrimination constitute assaults on the Commonwealth's attempts to secure for its citizens a measure of economic betterment through the employment system described above. It is to halt that erosion of the system as it applies to Puerto Rico and to protect its interests and the interests of its citizens in the future that the Commonwealth seeks declaratory and injunctive relief in this action.

SUMMARY OF ARGUMENT

The question before this Court is whether the Commonwealth has standing to sue for declaratory and injunctive relief for violations of federal laws that create a federal-State employment recruitment system and require defendant Growers to recruit domestic workers through the system. Because the violations and systematic discrimination alleged in the Complaint impair the Commonwealth's quasi-sovereign interests in the interstate employment system, as well as the economic and social interests of the Puerto Rican citizenry, the Commonwealth has standing to sue as parens patriae.

The doctrine of parens patriae allows a State to sue as a representative of its citizens if it has a quasi-sovereign interest in the subject matter of the suit or the injury alleged has a substantial

effect on the State's general population. This Court has repeatedly made clear that a State may sue parens patriae where, as here, the wrong complained of discriminated against and injured the State or its citizens because they resided in that State rather than somewhere else. In this case, the wrongs alleged injure the Commonwealth by frustrating and undermining its statutory role as a participant in the Wagner-Peyser interstate employment system, and they injure the economy of the Commonwealth and the well-being of its citizens by denying them the statutory employment preference to which they are entitled and by diminishing their opportunities for economic advancement. Because these injuries are widespread and reflect discrimination targeted at the Commonwealth and its citizens, the Commonwealth may properly bring this action parens patriae. Moreover, in view of the

serious obstacles facing individual suits and administrative proceedings seeking redress for the wrongs here alleged, and the insubstantial relief that could be achieved in such actions, the Commonwealth's standing not only is permissible, but is a compelling practical necessity.

ARGUMENT

I. THE COMMONWEALTH OF PUERTO RICO HAS STANDING TO SUE BECAUSE THE GROWERS' ALLEGED VIOLATIONS INJURE THE COMMONWEALTH'S STATUTORY AND ECONOMIC INTERESTS IN THE FEDERAL-STATE EMPLOYMENT RECRUITMENT SYSTEM, AS WELL AS THE ECONOMIC AND SOCIAL INTERESTS OF ITS CITIZENS.

This Court's prior decisions "establish the right of a State to sue as parens patriae to prevent or repair harm to its 'quasi-sovereign' interests."[11/] While

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11/ Hawaii v. Standard Oil Co., 405 U.S. 251, 258 (1972) (footnote omitted), citing Louisiana v. Texas, 176 U.S. 1 (1900); Missouri v. Illinois, 180 U.S. 208 (1901); Kansas v. Colorado, 206 U.S. 46 (1907);

[Footnote continued next page]

the cases do not set forth any precise formula, and standing decisions are generally "determined by the specific circumstances of individual situations" (Chapman v. Federal Power Commission, 345 U.S. 153, 156 (1953)), the Court's prior decisions make clear that a State has standing to sue parens patriae where, as here, it demonstrates a quasi-sovereign interest in the subject of the lawsuit and where, as here, it is seeking relief on behalf of its general population.

[Footnote continued from preceding page]

Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907); New York v. New Jersey, 256 U.S. 296 (1921); Pennsylvania v. West Virginia, 262 U.S. 553 (1923); North Dakota v. Minnesota, 263 U.S. 365 (1923), all discussed infra.

For parens patriae purposes, the Commonwealth of Puerto Rico is equivalent to a State, see Puerto Rico v. SS Zoe Colocotroni, 456 F. Supp. 1327, 1337 (D.P.R. 1978), aff'd 602 F.2d 12 (1st Cir. 1979), cert. denied, 450 U.S. 912 (1981); Guam v. Federal Maritime Comm'n, 329 F.2d 251 (D.C. Cir. 1964); Puerto Rico v. Federal Maritime Comm'n, 288 F.2d 419 (D.C. Cir. 1961).

In case after case, this Court has held that a State may sue parens patriae where, as here, the wrong complained of discriminated against and injured the State or its citizens because they resided in that State rather than somewhere else. In Georgia v. Pennsylvania Railroad, 324 U.S. 439 (1945), for example, the Court recognized that the State of Georgia had a quasi-sovereign interest in discriminatory railroad rates that disadvantaged its shippers and that it could properly vindicate that interest by parens patriae litigation. In Georgia, as in other cases where States have sought to vindicate similar quasi-sovereign interests, the Court held parens patriae standing proper without regard to the number of State citizens affected by the alleged wrongdoings.[12/] The geographically

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12/ E.g., Missouri v. Illinois, 180 U.S. 208 (1901) (sewage discharge); Kansas v.

[Footnote continued next page]

targeted nature of the wrong created a qualitatively different injury "apart from [the interests] of particular individuals who may be affected."[13/] The Court found support for its decision in Pennsylvania v. West Virginia, 262 U.S. 553 (1923), where Pennsylvania sued as parens patriae to challenge West Virginia's natural gas regulations, which discriminated against out-of-state consumers. See 324 U.S. at 450-451.

[Footnote continued from preceding page]

Colorado, 206 U.S. 46 (1907) (diverted stream); Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907) (air pollution); New York v. New Jersey, 256 U.S. 296 (1921) (sewage); North Dakota v. Minnesota, 263 U.S. 365 (1923) (flooded farmlands).

13/ 324 U.S. at 451. The fact that some members of the State's population may also seek to redress their private injuries from a defendant's actions does not preclude the State's parens patriae standing; its quasi-sovereign interests are still "independent of and behind the titles of its citizens," Georgia v. Tennessee Copper Co., 206 U.S. at 237, and call for vindication by the State.

This Court's recent decision in Maryland v. Louisiana, 101 S. Ct. 2114, 2124 (1981), is to the same effect. There, Maryland and other States sued as parens patriae for injuries imposed on their citizens, because of their residency in those States, by Louisiana's tax on natural gas piped out of state. The Court held that a State "may act as the representative of its citizens in original actions where the injury alleged affects the general population of a State in a substantial way." The State's parens patriae standing did not turn on any quantitative calculus about the individual injuries resulting from the alleged wrong. Instead, it was enough that the State sought to vindicate its "interest in protecting its citizens from substantial economic injury presented by imposition of the First-Use Tax," which discriminated between residents of

Louisiana and those of other states. 101 S. Ct. at 2125.[14/]

Under these standards it should be clear that the Court of Appeals correctly decided that Puerto Rico has parens patriae standing to bring this action. Puerto Rico has a quasi-sovereign interest, both in protecting its statutory role in the Wagner-Peyser Act employment program and in protecting its citizens from

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14/ See also North Dakota v. Minnesota, supra, 263 U.S. at 374 (the State had a quasi-sovereign interest in the "comfort, health and prosperity of its farm owners"); Washington Utilities & Transp. Comm'n v. Federal Communications Comm'n, 513 F.2d 1142, 1152 n.14 (9th Cir.), cert. denied, 423 U.S. 836 (1975) ("An independent state interest may be sufficient, whether or not a substantial portion of the citizenry is affected or an adequate individual remedy is available.").

injuries imposed on them as a class by reason of their Puerto Rican residency.[15/]

15/ Cases such as Pennsylvania v. New Jersey, 426 U.S. 660 (1976) (per curiam); Oklahoma v. Cook, 304 U.S. 387, 394 (1938); Kansas v. United States, 204 U.S. 331, 340-41 (1907), and New Hampshire v. Louisiana, 108 U.S. 76 (1883), where States were not allowed to proceed in the Supreme Court on behalf of their citizens, are not to the contrary. While the Court did refer to quantitative measures to deny standing in these cases, they were concerned, not with parens patriae standing itself, but rather with the very different issue whether States may invoke the Supreme Court's original jurisdiction to act as little more than collection agents for certain of their aggrieved citizens. The Court explained the rationale of these cases in Pennsylvania v. New Jersey:

> This rule [denying standing if the State is "merely litigating as a volunteer the personal claims of its citizens"] is a salutary one. For if, by the simple expedient of bringing an action in the name of a State, the Court's original jurisdiction could be invoked to resolve what are, after all, suits to redress private grievances, our docket would be inundated. And, more important, the critical distinction, articulated in Art. III, § 2, of the Constitution, between suits brought by "Citizens" and those brought by "States" would evaporate.

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A. The Commonwealth Has An Independent Statutory Interest In The Wagner-Peyser System That It Has Standing To Protect.

In enacting the Wagner-Peyser Act of 1933, Congress responded to a widely perceived need for a workable interstate employment system. The plight of Depression-plagued American workers was, of course, at the forefront of Congress' concern. But Congress recognized that the States, too, were in severe straits, unable by themselves adequately to provide for their workers. The obstacles encountered by the States in attempting to run employment offices without a well-coordinated interstate system were central concerns of Congress.[16/] The resulting

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426 U.S. at 665-66.

16/ See, e.g., 77 Cong. Rec. 4777 (1933) (remarks of Mr. Cochran); S. Rep. No. 63, 73d Cong., 1st Sess. 4 (1933).

legislation was intended to overcome these obstacles by creating a system to which the States contribute money and organization, and from which they gain the benefits of a coordinated interstate job exchange that they can mobilize in support of their economies.

The statutory scheme gives the States major responsibilities and requires them to perform significant governmental and sovereign functions. The Wagner-Peyser Act charges the Commonwealth with a duty to further an interstate employment system that matches domestic workers with employers and imposes on the Commonwealth obligations that are set out in complex implementing regulations.[17/] The Commonwealth is required, for example, to promote the full use of its placement

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17/ E.g., 20 C.F.R. §§ 602, 603 (1981).

facilities, to offer employment counseling to applicants, and to place workers in the jobs that are the most advantageous to them. It must structure its employment service so as to coordinate both with other State agencies and the Department of Labor with respect to placement generally and, more specifically, with respect to the recruitment and movement of migrant farmworkers. The Commonwealth's plans for carrying out its duties must be formalized in a document that the Department of Labor must review and approve.

The immigration laws and the temporary foreign labor certification regulations also reflect Congress' intention to use the interstate employment system to further the interests of the States.[18/] In 1965 Congress reviewed both

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18/ 8 U.S.C. § 1101(a)(15)(H)(ii) (1976).

the H-2 program and its "sister" INA section 212(a)(14)[19/] in response to concerns of States and their citizens about the adverse economic impact of foreign workers. It amended section 212(a)(14) to include an express presumption that alien workers may not be admitted unless there are no available domestic workers[20/] and satisfied itself that the H-2 program included the same presumption of non-admissibility.[21/] To assure that this

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19/ 8 U.S.C. § 1182(a)(14) (Supp. IV 1980).

20/ See Pub. L. No. 89-236, § 10(a), 79 Stat. 917 (1965).

21/ See 111 Cong. Rec. 20,997-98 (1965) (change in H-2 provision not necessary to raise presumption of nonadmissibility); S. Rep. No. 748, 89th Cong., 1st Sess. 26-27, reprinted in [1965] U.S. Code Cong. & Ad. News 3328, 3345 (existing law requires labor certification prior to determination on temporary worker's entry). The priority for U.S. workers reflects Congress' intent that aliens be imported for temporary labor only "for the purpose of alleviating labor shortages." H.R. Rep. No. 1365, 82d Cong., 2d Sess. 45, reprinted in [1952] U.S. Code Cong. & Ad. News 1653, 1698. See generally

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presumption will be given effect, the regulations require employers who desire to hire foreign workers to use the Wagner-Peyser system so that the State employment agencies will have the opportunity first to place their citizens in jobs.22/

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S. Rep. No. 748 at 10, 15, [1965] U.S. Code Cong. & Ad. News 3329, 3333-34 (report on Pub. L. 89-236, § 10(a)); 111 Cong. Rec. 23,351 (1965) (remarks of Mr. Kennedy); Hearings on H.R. 2580 Before Subcomm. No. 1 of the House Comm. on the Judiciary, 89th Cong., 1st Sess. 322-27 (1965).

22/ 20 C.F.R. §§ 655.200-.203 (1981). The Commonwealth's quasi-sovereign interest in this statutory program can be analogized to implied contracts embodied by the regulations that the Growers have allegedly violated. When aliens are hired by mainland growers through the H-2 programs, their foreign governments enter into contracts with the growers through their negotiating agent, the British West Indies Central Labour Organisation (BWICLO). In the case of domestic workers, the regulations governing the foreign labor certification and domestic recruitment process supplant express contracts. See Comm. Print, supra note 6, at 77. But the States can be said to enter into implied contracts that, by analogy to the express contracts of foreign governments, are tripartite, involving growers, workers, and

[Footnote continued next page]

This combination of statutory benefits and duties confers on the

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the workers' governments.

In the foreign worker context, the existence of independent and sovereign interests of the workers' governments in the H-2 program is clear. The Chief Liaison Officer of the BWICLO, for example, informed a Senate committee that "[t]he Governments of the countries in which the workers are recruited have their serious unemployment problems relieved by the temporary migration of the farm workers. . . . Undoubtedly all concerned benefit from the West Indies Programme for supplemental farm labour." Agricultural Labor Certification: Programs And Small Business: Hearings Before tbe Select Comm. on Small Business, 95th Cong., 1st Sess. 84 (1977).

In a different context, a federal district court recently dismissed the BWICLO and the Government of Jamaica as defendants in a suit alleging concerted discrimination against domestic migrant workers on the grounds that they were protected by sovereign immunity. Rios v. Marshall, No. 79-5711 (S.D.N.Y. Nov. 23, 1981). To reach this conclusion, the court found that the conduct of the BWICLO and Jamaica was sovereign or "governmental" in nature. Just as a government's activities regarding dispositions of its natural resources are sovereign acts, the court held, the BWICLO/Jamaican Government participation in the H-2 program was "the equivalent of establishing terms for the temporary removal of manpower resources from its territory." Id. at 22. Concern for and management of "manpower resources"

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Commonwealth an independent, quasi-sovereign interest in securing compliance with the Wagner-Peyser program and temporary foreign labor certification process by employers like the Growers.23/

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were not the type of acts that "'private persons normally perform.'" Id. at 21 (citing H.R. Rep. No. 1487, 94th Cong., 2d Sess. 14, reprinted in [1976] U.S. Code Cong. & Ad. News 6604, 6613). By the same token, Puerto Rico has a quasi-sovereign interest in the laws and regulations at issue in this suit.

23/ As this Court said in Coleman v. Miller, 307 U.S. 433, 441-42 (1939):

> [T]here has been recognition of the legitimate interest of public officials and administrative commissions, federal and state, to resist the endeavor to prevent the enforcement of statutes in relation to which they have official duties.

See also Chapman v. Federal Power Comm'n, 345 U.S. 153 (1953) (standing upheld where violations were alleged to have adverse effect on performance of official duties); Washington Utilities & Transp. Comm'n v. Federal Communications Comm'n, 513 F.2d 1142 (9th Cir.), cert. denied, 423 U.S. 836 (1975) (State agencies had standing to challenge FCC order affecting State

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The Commonwealth is a governmental entity that administers the Wagner-Peyser program. No other party has the resources or motivation to vindicate the Commonwealth's interests in ensuring that the expenditures it makes each year to combat its unemployment problem through the Wagner-Peyser system, and to comply with the duties imposed upon it by federal law, are more than empty -- and costly -- gestures.

The fact that the Department of Labor also has statutory responsibilities under the Wagner-Peyser Act and H-2 program in no way diminishes Puerto Rico's

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agencies' discharge of duties imposed by law); Interstate Commerce Comm'n v. Oregon-Washington R.R. & Navigation Co., 288 U.S. 14, 24-25 (1933) (State agencies had standing to challenge a district court order concerning the construction of certain railroad routes, since the agencies "officially represent[ed] the interest of their states in obtaining adequate transportation service.").

interests or its capacity to bring this suit.[24/] The Commonwealth's interests and the U.S. Department of Labor's interests are consistent, but not identical, and the Commonwealth should not have to abdicate its quasi-sovereign powers and responsibilities in the interstate employment system.[25/] Courts "should not be niggardly in gauging the interest of a state administrative officer in the validity of what his federal counterpart has done in an area of overlapping fact and intertwined law" (Nuesse v. Camp, 385 F.2d 694, 700 (D.C. Cir. 1967)), and they should be especially solicitous of State interests

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24/ See Interstate Commerce Comm'n v. Oregon-Washington R.R. & Navigation Co., supra.

25/ Because Puerto Rico is not complaining of any action by the federal government or its agencies, this suit does not violate the long-settled prohibition against State parens patriae suits against the federal government. See Massachusetts v. Mellon, 262 U.S. 447 (1923).

when there are no countervailing federal sovereign interests. The Secretary of Labor stated the point plainly in his brief, in the companion case to this one in the Second Circuit, supporting standing for Puerto Rico:

> [T]he Secretary of Labor's preeminent concern in the labor certification area must be the protection of the interests of those domestic workers, including Puerto Ricans . . . . Obviously, in that regard, the federal interest and that of the Commonwealth are entirely consistent . . . .
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> . . . [S]uit for injunctive relief to prohibit mistreatment of Puerto Rican workers would not interfere with the employment service complaint procedures, but instead would provide a forum for raising allegations of systemic practices which are not easily addressed through the complaint procedures.26/

26/ Brief for the Secretary of Labor as Amicus Curiae at 11, 12-13, Puerto Rico v. Bramkamp, 654 F.2d 212 (2d Cir. 1981).

B. The Commonwealth Also Has Parens Patriae Standing Because Of The Substantial Harm The Growers' Alleged Violations Do To The Economic And Social Interests Of Its Citizens.

No novel principle of law is required to support the proposition that some wrongs perpetrated against individuals are public, and not merely private wrongs, which the representative of the public may redress. Under this familiar principle, violence against an individual becomes a breach of the public peace; theft of property from an individual, an offense against public security.

In In re Debs, for example, the federal government was granted standing to enjoin the 1894 Pullman strike.27/ The government's cause of action in Debs was based on the Commerce Clause, but the

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27/ 158 U.S. 564 (1895).

principle of governmental standing to bring "public interest" suits is not limited to constitutional cases and extends to suits to redress statutory violations. In a recent case, Gladstone Realtors v. Village of Bellwood, 441 U.S. 91 (1979), this Court upheld a village's standing to sue realtors who allegedly "steered" customers toward and away from integrated areas in violation of the Fair Housing Act of 1968. "Steering," the Court observed, could deflate real estate prices in the village, and "[a] significant reduction in property values directly injures a municipality." 441 U.S. at 110-11. Moreover, the Court recognized that the village's interests in racial stability and balance might be harmed by the alleged statutory violations; if facts demonstrating such harm were established, "the Village has standing to challenge the legality of [defendants'] conduct." Id. at 111.

In Puerto Rico, where employment insecurity is a stubborn virus that will be shaken only by careful ministrations, flagrant breaches of the Wagner-Peyser employment security system and the concomitant erosion of the statutory preference for Puerto Ricans over foreign workers are more than private wrongs, for several reasons.

--First, the unemployment of Puerto Rican agricultural workers causes "ripple" effects throughout the Commonwealth's economy. Welfare expenditures and other costs of supporting the unemployed go up, limiting the Commonwealth's ability to attack other social problems or even to provide the basic underwriting necessary for schools and hospitals. At the same time, tax revenues decrease, as businesses that face flagging demand from a strapped population

flee the island. Increased job competition on the 100-by-36 mile island, as agricultural workers are forced to stay home, exacerbates social and political unrest.

--Second, while the migrant workers who directly suffered private injuries in the 1978 harvest comprise a relatively contained group, the class of Puerto Ricans who are vulnerable to continuing violations and disappearing opportunities on the mainland is far larger. Any one of the Commonwealth's nearly thirty percent unemployed looking for work could be affected.[28/] Puerto Rico seeks prospective relief for this broader class of its citizens, who may not have standing to sue on their own.

28/ Goolrick, Puerto Rico Is Hurt By Investment Slump And Reagan Cutbacks, Wall St. J., Feb. 3, 1982, at 1, col. 6.

--Third, when Puerto Rican citizens as a class are the objects of systematic discrimination in employment or any other endeavor, all Puerto Ricans, whatever their economic status, are harmed. Unremedied illegal resistance to Puerto Rican participation in agricultural work may encourage resistance to Puerto Rican participation in other segments of the mainland economy. Discrimination on the basis of Commonwealth citizenship may infect noneconomic spheres of life, creating barriers to full participation in the social and political culture of the United States.

Prior decisions of this Court support granting parens patriae standing where the effects of ostensibly private wrongs reverberate throughout a State in this way. In Maryland v. Louisiana, supra, for example, the Court held that States

could proceed as parens patriae to challenge Louisiana's First-Use Tax. The Court recognized that the tax was imposed on gas pipeline companies and not on citizens of the plaintiff States and that the economic burden of the tax on individual citizens of the plaintiff States was insubstantial. But it found the States' standing proper because the effects were widespread and because the challenged tax discriminated among persons on account of their residence in those States.29/ Similarly, in Georgia v. Pennsylvania Railroad, supra, and Pennsylvania v. West Virginia, supra, the Court allowed States to sue parens patriae to redress economic discrimination that directly or indirectly

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29/ 101 S. Ct. at 2125; see also North Dakota v. Minnesota, supra, and Missouri v. Illinois, 180 U.S. 208, 241 (1901), both cases in which the possible reverberating effects of wrongs directly injuring only a segment of the population were the bases for parens patriae suits.

affected various consumers and others because of their residency in the plaintiff States. In this case, too, the violations of federal law at issue affect Puerto Ricans directly and indirectly in a discriminatory fashion because they reside in Puerto Rico, rather than somewhere else. These violations are thus public wrongs that the Commonwealth is entitled to redress and to guard against: They "limit[] the opportunities of her people . . . and relegate[] her to an inferior economic position among her sister States."30/

II. PRACTICAL AND REMEDIAL CONSIDERATIONS WEIGH HEAVILY IN FAVOR OF PERMITTING THE COMMONWEALTH TO GO FORWARD WITH THIS SUIT.

The unavailability of effective remedies in individual actions challenging

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30/ Georgia v. Pennsylvania R.R., supra, 324 U.S. at 451.

the wrongs alleged in this case provides further support for the Commonwealth's parens patriae standing. In the first place, Puerto Rican workers face nearly insuperable obstacles in redressing through private actions the alleged violations by mainland growers. The costs of cumbersome interstate litigation and procedural problems presented by such litigation make it difficult if not impossible for even those Puerto Ricans who have been directly injured by the Growers to obtain any individual remedies.[31/] Second, even if private actions were more fruitful, and

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31/ In addition, to the extent that the Growers have frustrated the interstate job information exchange, individual unemployed Puerto Rican workers who are entitled to its benefits may be unable to show that they have personally been harmed by the violations in ways that would entitle them to private remedies. Such workers may have no actionable claim if, for example, they sought but were unable to formalize an employment offer or firm commitment with a mainland employer -- but they are harmed by the system's breakdown.

resulted in sanctions and remedies, the relief won would not vindicate the interests asserted by the Commonwealth of Puerto Rico in this suit.

A. Private Litigants Face Great Obstacles In Seeking Relief.

Petitioners point to lawsuits brought by individual Puerto Rican workers in the local courts of Puerto Rico as an indication that the Commonwealth's suit is superfluous and that the workers "have clearly demonstrated their ability to litigate the issues themselves." Brief for Petitioners at 27, 29-31. But the disjointed legal proceedings have brought and promise to bring no relief to the individual migrants or to the Commonwealth. Seventy-eight cases involving 220 workers were filed in Commonwealth courts as a result of the 1978 apple harvest in Virginia, New York, West Virginia, and

Maryland. In view of the fact that over 900 Puerto Ricans came to the mainland for the harvest, but less than thirty held jobs after two weeks, these cases do not encompass the complaints of hundreds more potential plaintiffs. Seventy-two of the cases have gone to judgment, twenty-two involving Virginia employers including defendant Growers. But the judgments have been ineffective: The Growers have contested the jurisdiction of the Puerto Rican courts in all cases and have consistently defaulted, resulting in judgments for damages averaging $700 to $1,000. While some actions to enforce the judgments have been brought in New York and Virginia courts, no final resolutions are in view.[32/]

32/ Similarly, the class action that was filed against most of the Growers more than three years ago in federal district court in Puerto Rico, see Brief for Petitioners at 30, limps along. The Growers filed a motion to dismiss on which the court has

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Numerous factors hinder the prosecution of individual claims in court or through administrative channels. Migrant farmworkers lack familiarity with the legal system. They cannot afford private counsel and thus must depend on community groups, yet many reside in rural areas where social services and support organizations are weak or nonexistent. The necessity of continuing to work on a daily basis in order to survive makes the diligent pursuit of legal claims impossible. And, if the worker manages to obtain a job with a mainland grower, his

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not yet ruled.

Administrative proceedings have also yielded no relief for Puerto Rican migrant workers, who have been unable to present proof establishing violations to the satisfaction of mainland State investigators. Only a few of the negative determinations have been appealed to the Department of Labor. See text, infra, for reasons underlying the lack of success.

environment -- housing, meals, and transportation -- is controlled by his employer, who is likely to have recruited and hired him only begrudgingly, required to do so by the H-2 program regulations. The worker is a powerless transient in a foreign community dominated economically and politically by the agricultural employers. His ability and motivation to institute legal claims against his employer for discriminatory treatment while he is still on the job site are greatly inhibited.[33/]

At the legal services level, too, many obstacles exist. In many areas, including the apple region in Virginia, there are no legal services programs for

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33/ Indeed, the Puerto Rican worker who contemplates bringing a claim against any employer is likely to fear the prospect of being refused employment in the future by other employers.

migrants to which Puerto Rican workers can turn. The Virginia Farmworkers Project, the only legal services group in the State with migrant worker expertise, has only one farmworker attorney, who is not a member of the Virginia bar. The Project is based on the Eastern Shore, however, 200 miles away from the work areas.[34/] Programs and lawyers are geographically based, and the legal services groups to which Puerto Ricans turn when they return home have difficulty prosecuting litigation on the mainland. Budgetary restrictions lead to high lawyer turnover, inadequate research

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34/ Similar conditions exist in Maryland and West Virginia. A private attorney in Charlottesville has agreed to file enforcement actions on the default judgments obtained against Virginia employers in the Puerto Rican courts. This attorney faces an especially burdensome obstacle, too: a procedural requirement that a separate suit be prepared for each worker involved in the twenty-odd Puerto Rico cases. Seventy separate filings were required.

facilities, and inexperienced attorneys overloaded with cases. Puerto Rican Migrant Legal Services, for example, serves the entire migrant population of Puerto Rico through six offices staffed by eight lawyers. Funded by the Legal Services Corporation, its budget is severely squeezed, and it will be cutting back to seven lawyers and five offices in a matter of days.

Considerations similar to these have been important factors underlying this Court's past decisions granting parens patriae standing. In Maryland v. Louisiana, supra, for example, this Court held that States could sue parens patriae to challenge an allegedly unlawful tax that indirectly affected their citizens. The Court reasoned in part that the "individual consumers cannot be expected to litigate the validity of the [tax] given that the

amounts paid by each consumer are likely to be relatively small." 101 S. Ct. at 2125. By the same token, Puerto Rico has standing to bring this action because its citizens cannot as a practical matter be expected to be able to protect their interests through private litigation.[35/]

B. The Remedies Available Through Individual Suits And Administrative Enforcement Could Not In Any Event Vindicate The Commonwealth's Interests.

Even if the Puerto Rican court judgments were enforced in mainland courts or if sanctions and remedies were meted out in other individual proceedings, the relief

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35/ See also Pennsylvania v. Parker, 659 F.2d 306, 315 (3d Cir. 1981) (parens patriae civil rights suit for injunctive relief proper because many victims of violations may be unable to show likelihood of future violations of their rights and because individual litigation "is not likely to be within the resources available to the typical victims of [the alleged] misconduct").

won would not vindicate the interests asserted in this proceeding. Private suits would yield only individualized, narrow relief against particular Growers. Injunctive relief would be framed narrowly, and the deterrent effects of compensatory damage awards are problematical.

Administrative proceedings, too, are insufficient. The Department of Labor has basically two sanctions at its disposal. It can deny an employer certification in the year following the season in which the employer does not comply with the terms of a temporary labor certification, 20 C.F.R. § 655.210 (1981), or it can deny the employer access to the employment recruitment system, 20 C.F.R. § 658.501(a) (1981). Neither sanction would bring relief to the Commonwealth or its citizens; indeed, the latter sanction would be contrary to the Commonwealth's

purpose, which is to create employment opportunities for its citizens.[36/]

In contrast, this suit by the Commonwealth could result in a remedy more responsive to its concerns. Declaratory relief would protect all potential workers, not only those injured in 1978. The injunction requested would be broader than an injunction that could be obtained by any

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36/ As the Secretary of Labor put it in his brief in the Second Circuit in the companion case to this one, "the complaint system does not contemplate injunctive relief . . . [and] regardless of the efficacy of the system in handling individual complaints, these procedures were not intended to redress Puerto Rico's allegations of systemic mistreatment of Puerto Rican workers." Brief for the Secretary of Labor, supra note 26, at 12.

Under 20 C.F.R. § 658.502(a)(5)(ii) (1981), back pay to workers may also be available. Even this seldom-used remedy would fail to protect the Commonwealth's interests in obtaining benefits and performing its duties under the interstate employment system and in halting wrongs perpetrated against Puerto Ricans on the basis of their citizenship.

individual worker against the Grower causing him injury. The symbolic effects of the Commonwealth's suit would also be considerable. Under the current regime, mainland employers can violate the laws, confident that only a rare worker will have the resources to pursue a complaint to a successful conclusion and that the remedy he can obtain will be trivial compared to the total costs resulting from all their violations. But if the Commonwealth can obtain relief -- even if it ultimately fails in this action, but its standing to sue is acknowledged -- the requirements of the law will be taken more seriously, and a measure of integrity may be restored to the interstate employment system and H-2 program.

This Court has made clear that the existence of alternative private and administrative remedies in no way precludes

parens patriae suits. In Georgia v. Pennsylvania Railroad, supra, the Court held that administrative and private remedies did not bar Georgia's parens patriae suit. In Pennsylvania v. West Virginia, supra, and Georgia v. Tennessee Copper Co., supra, too, the Court also sanctioned parens patriae suits even though individuals could have brought suit on their own. The Court recognized in these cases that the States have independent interests of their own that can be vindicated only by parens patriae litigation.37/

37/ See also Missouri v. Illinois, supra, 180 U.S. at 241:

> An inspection of the bill discloses that the nature of the injury complained of is such that an adequate remedy can only be found in this court at the suit of the State of Missouri. . . .
>
> [S]uits brought by individuals, each for personal injuries, threatened or received, would be wholly inadequate.

If the Commonwealth of Puerto Rico were not allowed to proceed, neither courts nor administrative agencies would have occasion to view the broader picture of systematic discriminatory violations and the undermining of the Commonwealth's statutory role in the interstate employment system that are at issue in this action. In that event, there would in all likelihood be no remedy adequate to deal with the wrongs alleged, and the pattern of violations so harmful to the Commonwealth and its citizens would be permitted to continue. Because the Commonwealth is the party best able to obtain the relief necessary to protect its interests, it was properly found to have parens patriae standing to bring this action.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals granting the Commonwealth standing to sue should be affirmed.

Respectfully submitted,

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